

**FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579**

**IN THE MATTER OF THE CLAIM OF**

**JOSE M. GARCIA  
OSELIA N. GARCIA**

**Claim No. CU-2437**

**Decision No. CU 4803**

**Under the International Claims Settlement  
Act of 1949, as amended**

**PROPOSED DECISION**

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by JOSE M. GARCIA for \$55,300.00 based upon the asserted ownership and loss of certain real and personal property in Cuba including a debt. Claimant JOSE M. GARCIA has been a national of the United States since 1917.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The record discloses that OSELIA N. GARCIA, the wife of JOSE M. GARCIA, has been a national of the United States since her marriage to claimant, JOSE M. GARCIA, in January, 1922. Pursuant to the community property law of Cuba she had an interest in property acquired by her husband in Cuba subsequent to their marriage. Accordingly, OSELIA N. GARCIA is joined as claimant in this matter.

Claim has been asserted as follows:

Two-story house in Santa Clara, Cuba	\$32,800.00
Household furnishings therein	5,000.00
Debt	<u>17,500.00</u>
	\$55,300.00

Based upon the entire record, including affidavits of individuals who appear to have knowledge of the facts, the Commission finds that claimants owned the improved real property and the household furnishings.

On October 14, 1960, the Government of Cuba published in its Official Gazette, Special Edition, its Urban Reform Law. Under this law the renting of urban properties, and all other transactions or contracts involving transfer of the total or partial use of urban properties was outlawed (Article 2). The law covered residential, commercial, industrial and business office properties (Article 15). Following Chapter VI of the law appears a section entitled "Temporary Provisions", and the third paragraph thereof provides that citizens of foreign countries who do not have the status of legal residents shall be excluded from the rights and benefits conferred by this law.

Claimant, JOSE M. GARCIA, states that his home and home furnishings were taken on March 17, 1961 after two armed representatives of the Cuban

Government ordered the residence to be vacated. The record indicates that claimants were away on a trip at the time and had left their home in charge of a caretaker. The record includes an affidavit of the caretaker and of friends who were visiting with her when she was ordered to vacate. Based on the record the Commission finds that claimants' home was within the purview of the Urban Reform Law and was taken by the Government of Cuba on March 17, 1961. (See Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39.) The Commission further finds that the furnishings therein were also taken on that date.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

The record includes, in support of the claimed values, a description of the real property as a two-story reinforced concrete house, 70 feet front by 40 feet deep with cement roof and two large water tanks, on a plot 75 feet by 100 feet, with about 18 rooms and usual facilities. There are also affidavits from individuals including two real estate brokers and an insurance agent who state that they are familiar with the house and furnishings in question, a photocopy of a photograph of the house, and an itemized list of the household furnishings and other personalty in the house.

On the basis of the evidence of record, and evidence available to the Commission regarding the value of similar properties in Santa Clara, the Commission finds that on March 17, 1961, the date of loss, the house and lot had a value of \$32,800.00 and that the personalty in the house, after appropriate depreciation, had an aggregate value of \$4,250.00.

With regard to the portion of this claim based on the loss of a debt, the record includes two affidavits including one from Alberto M. Larrieu who states that he is a Cuban, that he was the head of A. M. Larrieu and Co., a Cuban commercial enterprise, that claimant, JOSE M. GARCIA, lent the business a total of \$17,500.00 which amount was carried as a debt on the company's books, and that the business was confiscated by the Government of Cuba on January 28, 1961.

Based on the entire record, the Commission finds that A. M. Larrieu and Co. owed this debt and that claimants suffered a loss in the amount of \$17,500.00 within the meaning of Title V of the Act as a result of the taking of A. M. Larrieu and Co. on January 28, 1961.

Claimant, JOSE M. GARCIA, states that in 1963, an income tax deduction in the amount of \$55,500.00 was asserted for the losses claimed herein, and was allowed by the Internal Revenue Service.

The Commission concludes that claimants suffered a loss in the amount of \$32,800.00 for the improved realty; \$4,250.00 for the household furnishings and other personalty; and \$17,500.00 for the debt of a nationalized enterprise, all within the meaning of Title V of the Act, as a result of the taking of this property by the Government of Cuba.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered as follows:


<u>FROM</u>	<u>ON</u>
January 28, 1961	\$17,500.00
March 17, 1961	<u>37,050.00</u>
	\$54,550.00


CERTIFICATION OF LOSS

The Commission certifies that JOSE M. GARCIA and OSELIA N. GARCIA suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fifty-four Thousand Five Hundred Fifty Dollars (\$54,550.00) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

APR 29 1970

  
Lytle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

  
Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)